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DECISION



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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-190383

DATE: December 16, 1977

MATTER OF: NuAire, Inc.

DIGEST:

1. Protest filed after bid opening that bidders could not comply with IFB specification is untimely and will not be considered on its merits.
2. Government's acceptance of responsive bid effectively binds bidder to perform in accordance with IFB terms. Whether bidder is able to do so is matter of responsibility, and agency's affirmative determination thereof will not be reviewed by GAO except in limited circumstances. Moreover, whether awardee actually complies with IFB requirements is matter of contract administration, and not for GAO consideration.

Invitation for bids (IFB) No. 77-E-ARS 77 for Laminar Flow Hoods was issued by the Department of Agriculture and included the requirement that proposed hoods meet standard No. 49 of the National Sanitation Foundation. Bids were opened on July 29, and award was made to Germfree Lab. Inc., on September 22. By letter dated October 3 and filed here on October 11, NuAire, Inc., protests that no bidder, including Germfree, can comply with the subject requirement.

Concerning the propriety of requiring bidders to meet standard No. 49, section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. part 20 (1977), provides in pertinent part:

"Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening * * * shall be filed prior to bid opening * * *."

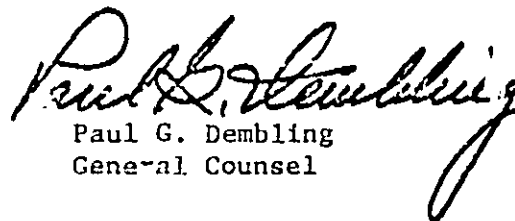
Accordingly, to the extent that the protest involves that issue, it is untimely under section 20.2(b)(1) and will not be considered on its merits.

In regard to whether the awardee can comply, the Government's acceptance of a responsive bid effectively binds the bidder to

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perform in accordance with the terms of the solicitation. 52 Comp. Gen. 955 (1973). The ability of a bidder to do so is a matter of responsibility. See 53 Comp. Gen. 396 (1973). The award of the contract to Germfree necessarily involved an affirmative determination of that firm's responsibility under Federal Procurement Regulations § 1-2.407 (1964 ed. amend. 139), and our Office does not review protests against affirmative determinations of responsibility unless either fraud on the part of the procuring official is alleged, or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64. Neither exception is applicable here. Moreover, whether there will be actual compliance with the IFB's requirements is a matter of contract administration and is not for consideration by our Office. Crowe Rope Company, B-187092, August 18, 1976, 76-2 CPD 174.

The protest is dismissed.


Paul G. Dembling
General Counsel